

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
2015 NOV 16 PM 2:03
OFFICE OF THE CLERK

MARTHA MURPHY, Individually and
as duly appointed Personal
Representative of the Estate of John
M. "Mike" Murphy, deceased,

Case No. 8:13-CV-155

**ORDER ON FINAL PRETRIAL
CONFERENCE**

Plaintiff,

vs.

EMILY R. SVOBODA and SHARON
SOLTERO and SAUL SOLTERO,
d/b/a PENNY'S FLORAL,

Defendants.

A final pretrial conference was held on the 2nd day of November, 2015.
Appearing for the parties as counsel were:

Michelle Epstein on behalf of the Plaintiff

Dave Mullin on behalf of Emily R. Snitily, f/k/a Emily R. Svoboda, and Sharon
Soltero and Saul Soltero.

(A) Exhibits. See attached Exhibit List.

Caution: Upon express approval of the judge holding the pretrial conference for good cause shown, the parties may be authorized to defer listing of exhibits or objections until a later date to be specified by the judge holding the pretrial conference. The mere listing of an exhibit on an exhibit list by a party does not mean it can be offered into evidence by the adverse party without all necessary evidentiary prerequisites being met.

(B) Uncontroverted Facts. The parties have agreed that the following may be accepted as established facts for purposes of this case only:

The parties agree to the following uncontroverted facts:

Plaintiff Martha M. Murphy is a resident of Opelika, Lee County, Alabama.

John M. "Mike" Murphy died at his home in Opelika, Alabama, on July 13, 2015.

Mr. Murphy's death certificate lists his cause of death as chronic lymphoid leukemia.

Emily R. Snitily, f/k/a Emily R. Svoboda, is a resident of Crawford, Dawes County, Nebraska.

Sharon Soltero and Saul Soltero are residents of Columbus, Platte County, Nebraska.

On October 4, 2010 John M. "Mike" Murphy was involved in an automobile accident in Columbus, Platte County, Nebraska involving his car and a van driven by Defendant Emily R. Snitily.

At the time of the automobile accident, Mr. Murphy was working as a contractor for Emerson Electric in Columbus, Nebraska and was staying in Columbus.

At the time of the automobile accident, Defendant Emily R. Snitily was employed by the Defendants Sharon Soltero and Saul Soltero, d/b/a Penny's Floral in Columbus, Platte County, Nebraska and as part of her employment, operated a 2003 Dodge Grand Caravan van for work-related purposes. The van was owned by the Defendants, Sharon Soltero and Saul Soltero, d/b/a Penny's Floral.

On October 4, 2010, Emily Snitily was driving the van within the scope of her employment with Penny's Floral and was driving the van with the permission of Sharon Soltero and/or Saul Soltero.

On the day of the accident, John M. Murphy was driving his 2007 Ford Focus vehicle westbound on Highway 30 in Columbus, Platte County, Nebraska. Emily R. Snitily was driving the 2003 Dodge Grand Caravan van eastbound on Highway 30 in Columbus.

Emily R. Snitily turned the van in front of John M. Murphy's vehicle and as a result, the Murphy vehicle collided into the passenger side of the van. After colliding with the van, the Murphy vehicle struck a stop sign and then came to a stop in a ditch adjacent to Highway 30.

The sole and proximate cause of the October 4, 2010, automobile collision was the negligence of Emily R. Snitily.

John M. "Mike" Murphy and Martha Murphy had been married for 49 years at the time of Mr. Murphy's death.

(C) Controverted and Unresolved Issues. The issues remaining to be determined and unresolved matters for the court's attention are:

1. Whether the collision was a proximate cause of some damage to Mike M. Murphy;
2. The nature and extent of Mr. Murphy's damage;
3. Whether the collision was a proximate cause of some damage to Martha Murphy;
4. The nature and extent of Mrs. Murphy's damage.

Plaintiff claims the following special damages:

Medical Expenses \$44,567.57

Lost Wages: \$99,000.00

Plaintiff claims Mr. Murphy sustained the following permanent injuries as result of the automobile accident:

1. Permanent injury to his left knee;
2. Permanent brain injury – specifically, injury to the pre-frontal cortex of the brain;
3. Permanent injury to his neck; and
4. Permanent injury to his left wrist.

(D) Witnesses. All witnesses, including rebuttal witnesses, expected to be called to testify by plaintiff, except those who may be called for impeachment purposes as defined in NECivR 16.2(c) only, are:

1. Plaintiff Martha Murphy, 723 N. Cary Drive, Auburn, AL 36830 (will be present at trial).
2. Defendant Emily R. Svoboda, 313 W. Maple St., Dwight, NE 68635 (expected to be present at trial).
3. Marie Wooldridge, 14211 Snowberry Dr., Wellington, FL 33414 (will be present at trial).
4. Don Young, Emerson Industrial Automation, 9377 West Higgins Road, Rosemont, Illinois, 60018 (expected to be present at trial).

All witnesses expected to be called to testify by defendants, except those who may be called for impeachment purposes as defined in NECivR 16.2(c) only, are:

- | | | |
|----|--|-----------|
| 1. | Martha Murphy
723 Cary Drive
Auburn, AL 36830 | Will Call |
| 2. | Emily Snitily, f/k/a Emily Svoboda
312 Annin Street
Crawford, NE 69339 | Will Call |
| 3. | Sharon Soltero
208 SE Calle Columbo
Columbus, NE 68601 | Will Call |
| 4. | Saul Soltero
208 SE Calle Columbo
Columbus, NE 68601 | May Call |

It is understood that, except upon a showing of good cause, no witness whose name and address does not appear herein shall be permitted to testify over objection for any purpose except impeachment. A witness whose only testimony is intended to establish foundation for an exhibit for which foundation has not been waived shall not be permitted to testify for any other purpose, over objection, unless such witness has been disclosed pursuant to Federal Rule of Civil Procedure 26(a)(3). A witness appearing on any party's witness list may be called by any other party.

(E) Expert Witnesses' Qualifications.

Experts to be called by plaintiff and their qualifications are:

Dr. Raymond Godsil, Jr., Auburn Orthopedic Center 1800 Lakeside Circle, Auburn, AL 36830. Dr. Godsil's qualifications are stipulated.

Dr. Ona Graham, PsyD, 1443 17th St. Columbus, GA 31901. Dr. Graham's qualifications are stipulated.

Dr. Michael Gorum, Columbus Neurologic Institute, 1538 13th Ave. Suite B300, Columbus, GA 31901-2563. Dr. Gorum's qualifications are stipulated.

Experts to be called by defendants and their qualifications are:

Thomas Haley, Ph.D., 12728 Augusta Avenue, Suite 150, Omaha, NE 68144.
Dr. Haley's qualifications are stipulated.

Joel Cotton, M.D., 8901 W. Dodge Road, Suite 210, Omaha, NE 68114. Dr.
Cotton's qualifications are stipulated.

(F) Voir Dire. Counsel have reviewed Federal Rule of Civil Procedure 47(a) and NECivR 47.2(a) and suggest the following with regard to the conduct of juror examination:

The parties would like to conduct voir dire to the extent the Court sees fit.

(G) Number of Jurors. Counsel have reviewed Federal Rule of Civil Procedure 48 and NECivR 48.1 and suggest that this matter be tried to a jury composed of 12 members.

(H) Verdict. The parties will stipulate to a less-than-unanimous verdict. The parties' stipulation is: after six hours of deliberations have passed, ten or eleven jurors may enter a verdict.

(I) Briefs, Instructions, and Proposed Findings. Counsel have reviewed NECivR 39.2(a), 51.1(a), and 52.1, and suggest the following schedule for filing trial briefs, proposed jury instructions, and proposed findings of fact, as applicable:

The parties agree that proposed jury instructions shall be filed five (5) working days before the first day of trial.

(J) Length of Trial. Counsel estimate the length of trial will consume not less than 2 days, not more than 3 days, and probably about 3 days.

(K) Trial Date. Trial is set for November 23, 2015.

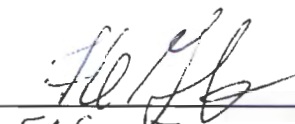
MARTHA MURPHY, Individually and as duly
appointed Personal Representative of the
Estate of John M. "Mike" Murphy, deceased,
Plaintiff

By: /s/ Michelle D. Epstein
Michelle D. Epstein # 21936
Jason G Ausman, # 22261
AUSMAN LAW FIRM PC LLO
1015 N. 98th St. Ste. 102
Omaha, NE 68114
Telephone: 402- 933-8140
Facsimile: 402-718-9423
michelle@ausmanlawfirm.com
jason@ausmanlawfirm.com

EMILY R. SVOBODA, SHARON SOLTERO
AND SAUL SOLTERO, D/B/A PENNY'S
FLORAL, Defendants

By: /s/ David C. Mullin
David C. Mullin, #21985
FRASER STRYKER PCLLO
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102-2663
Telephone: (402) 341-6000
Facsimile: (402) 341-8290
Email: dmullin@fslf.com
ATTORNEYS FOR DEFENDANTS

BY THE COURT:



F.D. Goulet
U.S. Magistrate
11/16/15

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

<p>MARTHA MURPHY, INDIVIDUALLY and as SPECIAL ADMINISTRATOR OF THE ESTATE OF JOHN M. "MIKE" MURPHY, DECEASED,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>EMILY R. SVOBODA and SHARON SOLTERO and SAUL SOLTERO, d/b/a PENNY'S FLORAL,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: right;">Case No. 8:13-CV-155</p> <p style="text-align: center;">JOINT EXHIBIT LIST</p> <p>Case Number: Courtroom Deputy: Court Reporter:</p>
--	---

Trial Date: November 23, 2015

EXH NO.	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
1	Photograph, Mr. Murphy's vehicle post-mva					
2	Photograph, Mr. Murphy's vehicle post-mva					
3	Photograph, Mr. Murphy's vehicle post-mva					
4	Photograph, Mr. Murphy's vehicle post-mva					
5	Photograph, Mr. Murphy's vehicle post-mva					
6	Photograph, Mr. Murphy's vehicle post-mva					
7	Photograph, Mr. Murphy's vehicle post-mva					
8	Photograph, Ms. Svoboda's vehicle post-mva					
9	Photograph, Ms. Svoboda's vehicle post-mva					
10	Photograph, Ms. Svoboda's vehicle post-mva					
11	Deposition Transcript, Dr. Ona Graham					
12	Deposition Video, Dr. Ona Graham (1)					
13	Deposition Video, Dr. Ona Graham (2)					
14	Curriculum Vitae, Dr. Ona Graham (Ex. 2 Dr. Graham's Deposition)					

EXH NO.	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
15	Dr. Graham's Billing Statement (Ex. 1 Dr. Graham's Deposition)					
16	Dr. Graham's report/note, 1/16/13 (Ex. 3 Dr. Graham's Deposition)					
17	Dr. Graham's report/note, 4/4/14 (Ex. 4 Dr. Graham's Deposition)					
18	Deposition Transcript, Dr. Michael Gorum					
19	Deposition Video, Dr. Michael Gorum					
20	Curriculum Vitae, Dr. Michael Gorum (Ex. 1 Dr. Gorum's Deposition)					
21	Dr. Gorum's Billing Statements (Ex. 2 Dr. Gorum's Deposition)					
22	Deposition Transcript, Dr. Raymond Godsil, Jr.					
23	Deposition Video, Dr. Raymond Godsil, Jr.					
24	Curriculum Vitae, Dr. Raymond Godsil, Jr. (Ex. 1 Dr. Godsil's Deposition)					
25	Medical Billing Statements Reviewed by Dr. Godsil (Ex. 2 Dr. Godsil's Deposition)					
26	Columbus Orthopedic & Sports Medicine Clinic record, 10/12/10 (Ex. 3 Dr. Godsil's Deposition)					
27	Columbus Family Practice record, 10/5/10 (Ex. 4 Dr. Godsil's Deposition)					
28	Avenue Chiropractic Records, 10/13/10, 10/18/10, 11/3/10 (Ex. 5 Dr. Godsil's Deposition)					
29	The Orthopaedic Clinic records, 9/19/11, 10/17/11, 10/20/11, 10/27/11, (Ex. 6 Dr. Godsil's Deposition)					
30	Advantage Chiropractic Records, 2/10/11, 2/11/11, 2/14/11, 2/16/11, 2/28/11					
31	Auburn Orthopaedic Center Records, 1/13/11, 1/24/11, 5/4/11, 9/9/11					
32	U.S. Dept. of Health & Human Services, CDC Pamphlet "Facts for Physicians"		R,H			
33	U.S. Dept. of Health & Human Services, CDC Pamphlet, "Facts About Concussion and Brain Injury"		R,H			

EXH NO.	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
34	Deposition Transcript, Donald Young					
35	Mr. Murphy Obituary, 7/21/5		R, H			
36	Women's Hope Medical Clinic Publication, September 2015					
37	Mike Murphy Resume		R,H			
38	Emerson Electric Payments to Mike Murphy; 5/11/10 – 1/1/11					
39	Stipulation or Summary of Business Expenses, Mike Murphy Consulting		R,F,H			
40	Murphy Family Photographs		R			
100	Rule 1006 Medical Expense Summary, sorted by provider					
101	Rule 1006 Medical Expense Summary, sorted in chronological order					
102	Letter to James Rosa from John "Mike" Murphy, dated 11/11/10					
103	Brochure by Dr. Jonathan Liss regarding Alzheimer's, MURPHY 000-601 through MURPHY 000-621		R, H			
104	Proposed letter by John Michael Murphy, dated 06/10/12, MURPHY 000-622 through MURPHY 000-625					
105	Driver's Motor Vehicle Accident Report by John Michael Murphy, dated 10/06/10, MURPHY 000-686 through MURPHY 000-687					
106	Deposition transcript of Martha Murphy					
107	Affidavit of Donald Young		H			
108	Curriculum Vitae of Joel Cotton, M.D.					

EXH NO.	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
109	Deposition transcript of Dr. Joel Cotton					
110	Videotape from the deposition of Dr. Joel Cotton					
111	Curriculum Vitae of Thomas Haley, Ph.D.					
112	Report of Thomas Haley, Ph.D.		H			
113	Report of Dr. Thomas Haley, dated 01/23/15 and the CV of Dr. Thomas Haley (Graham Depo. Exh. 5)		H			
114	Office notes of Dr. Raymond Godsil (Godsil Depo. Exh. 11)		R			
115	Prehospital Care Report by Columbus Fire Department, dated 10/04/10 (Godsil Depo. Exh. 13 and Cotton Depo. Exh. 2)					
116	Office Note by Dr. Jonathan Liss, dated 01/28/13 (Cotton Depo. Exh. 6)		R			
117	Record from Auburn Orthopaedic Center, dated 02/23/10		R			
118	Record from Auburn Orthopaedic Center, dated 01/04/11		R			
119	Record from George McCluskey, M.D. - St. Francis Orthopaedic Institute, dated 01/19/11		R			
120	Record from Auburn Orthopaedic Center, dated 04/28/11		R			
121	Record from Aldridge Physical Therapy, dated 05/10/11		R			
122	Record from Aldridge Physical Therapy, dated 08/02/11		R			
123	Record from Aldridge Physical Therapy, dated 11/22/11		R			
124	Record from Michael Gorum, M.D. - Columbus Neurologic Institute, dated 12/07/11		R			
125	Record from Michael Gorum, M.D. - Columbus Neurologic Institute, dated 12/12/11		R			
126	Record from Auburn Orthopaedic Center / The Orthopaedic Clinic, P.C., dated 02/02/12		R			

EXH NO.	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
127	Record from Advantage Chiropractic Clinic, dated 03/07/13		R			
128	Record from Brandon Johnson, M.D., dated 12/17/13		R			
129	Plaintiff's Tax Returns					
130	Plaintiff John Murphy's Responses to Defendants' First Set of Request for Production, dated 09/26/13					
131	Plaintiff Martha Murphy's Verified Answers to Defendants' First Set of Interrogatories, dated 10/10/13					
132	Plaintiff John Murphy's Verified Answers to Defendants' First Set of Interrogatories, dated 10/10/13					
133	Plaintiff John Murphy's Supplemental Answers to Interrogatories, dated 01/07/15					
134	Plaintiff John Murphy's Supplemental Responses to Requests for Production of Documents, dated 01/07/15					
135	Plaintiff's Supplemental Answers to Interrogatories, received 11/12/15					
136	Demonstrative exhibits					

OBJECTIONS:

R: Relevancy
H: Hearsay
A: Authenticity
O: Other (specify)

1370739v1